Supreme Court, U.S.
FILED
JAN 25 2000
CLERK

No. 99-1030

IN THE

Supreme Court of the United States

CITY OF INDIANAPOLIS, INDIANA, AND BART PETERSON, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF INDIANAPOLIS, INDIANA,

Petitioners,

v.

JAMES EDMOND, JOELL PALMER, ON THEIR OWN BEHALF AND ON BEHALF OF A CLASS OF THOSE SIMILARLY SITUATED,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONERS

A. SCOTT CHINN
CORPORATION COUNSEL
CONSOLIDATED CITY OF INDIANAPOLIS
200 E. Washington Street
Indianapolis, IN 46204
(317) 327-4055

MIGUEL A. ESTRADA
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Petitioners

6pp

TABLE OF AUTHORITIES

Page

Cases:

Merrett v. Moore, 58 F.3d 1547 (11th Cir. 1995) 2

Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) 4

State v. Damask, 936 S.W.2d 565 (Mo. 1996) 2

United States v. Ramirez-Gonzalez, 87 F.3d 712 (5th Cir. 1996) 3

Rule:

Sup. Ct. R. 10(a) 2

REPLY BRIEF FOR PETITIONERS

The question presented in this case is whether traffic checkpoints at which police officers check drivers' licenses and vehicle registrations, and also look for signs of impairment, must be deemed unreasonable under the Fourth Amendment solely because those roadblocks also are intended to intercept and apprehend motorists who use the public highways to smuggle unlawful narcotics. The Seventh Circuit forthrightly conceded that the lower courts—federal and state—are deeply divided on that question. *See* Pet. App. 2a; *see also id.* at 50a, n.* (Easterbrook, J., concurring in the denial of rehearing en banc) (noting that because "a conflict among the circuits (and state courts) preexisted the panel's opinion * * * [o]nly a higher court can give a definitive answer"). Respondents nonetheless contend that both the majority and dissenting members of the Seventh Circuit panel were mistaken in perceiving a division of authority on the question presented. Respondents also contend that review is unwarranted, because the lower courts ruled only on the issuance of a preliminary injunction and, in respondents' view, "there must be a further development of the factual record before plenary review should be considered." Br. In Opp. at 2-3. Neither contention has merit.

1. Respondents assert that the question in this case is whether the Fourth Amendment permits traffic roadblocks that are intended *solely* to interdict narcotics traffickers, rather than whether it is lawful for authorities to set up a license or sobriety checkpoint that also is used to detect narcotics trafficking. Br. In Opp. 3-5. Respondents, however, *stipulated* below that the officers who conduct the roadblocks must first "ask [each motorist] for [his] license and registration" (Pet. App. 52a, 53a), and that the Indianapolis Police Department's procedures also require officers to examine each stopped motorist "for signs of impairment." *Id.* at 53a. Indeed, as respondents themselves ultimately are forced to concede, that record led the district court to conclude that "a secondary purpose of the

checkpoints is to check driver's licenses and vehicle registrations." Pet. App. 44a.

The Seventh Circuit did not purport to overturn that finding. Nor did that court adopt a different reading of the parties' stipulation. The court instead concluded that the City's program is unlawful because the "primary purpose" of the program is to interdict narcotics, rather than to check drivers' licenses or to identify impaired drivers. Pet. App. 10a-11a. That conclusion and the mode of analysis that produced it unquestionably conflict with the rulings of other lower courts. *See, e.g.*, *Merrett v. Moore*, 58 F.3d 1547, 1550-51 (11th Cir. 1995) (roadblock is consistent with Fourth Amendment if "one lawful purpose" for it is to check drivers' licenses and registrations even if "the chief * * * purpose of the roadblock[] * * * was to intercept drugs").

Although respondents' effort to reframe the question presented is clearly foreclosed by the record, plenary review would be warranted in this case even if respondents were correct in their characterization of the question presented. Respondents "[a]dmit[]" that the Supreme Court of Missouri has upheld, as against Fourth Amendment challenges, traffic roadblocks "designed solely to interdict drugs." Br. In Opp. 5, citing *State v. Damask*, 936 S.W.2d 565 (Mo. 1996). Thus, even on respondents' view of the issue decided by the Seventh Circuit, the decision below plainly warrants further review because it concededly "conflicts with a decision by a state court of last resort." Sup. Ct. R. 10(a).

2. Respondents also are wrong to contend that the preliminary injunction record is insufficient to rule on the validity of the City's roadblock program. Neither the district court nor the court of appeals decided the case on any basis peculiar to the preliminary injunction context, such as a balancing of equities or assessing a "likelihood" (as opposed to a certainty) of success on the merits. The district court denied an injunction because it found that the stipulated facts establish that the City's roadblock program

is lawful as a matter of law. Pet. App. 40a ("we hold that the checkpoint procedures are constitutional"). The court of appeals, in turn, reached the opposite conclusion because it concluded, on the same record, that the City's program is unlawful as a matter of law. In so holding, the court of appeals conceded that its conclusion depended entirely on the constitutional rule it elected to apply to the case. Although the court virtually conceded that the City's program would be constitutional if the test for legality were "reasonableness" (Pet. App. 3a), it refused to apply that test because it believed that "courts do not usually assess reasonableness at the program level when they are dealing with searches related to the general criminal law enforcement." *Id.* at 4a. Nothing in that legal conclusion turns on the procedural posture of the case.

Respondents also err in contending that certiorari is unwarranted because the court of appeals suggested that the City's program might "pass Fourth Amendment muster" "on a fuller record." Br. In Opp. at 3. As the petition explained, the Seventh Circuit did *not* hold that it lacked sufficient facts to decide the Fourth Amendment question. Pet. 24-25 n.4. Had the court believed that, it surely would have remanded the case to the district court with instructions to develop the record more fully instead of proceeding, as it did, to rule on the constitutional issue. *Compare United States v. Ramirez-Gonzalez*, 87 F.3d 712, 715-16 (5th Cir. 1996). Indeed, respondents are unable to identify—even now—a *single* specific fact that is both absent from the stipulated record and needed for meaningful review by this Court.

As petitioners have explained, without pertinent rebuttal from respondents, the Seventh Circuit merely left open the possibility that the City might in the future adduce "facts" showing that its drug problem is so grave that the need to stem it is comparable (in some undefined sense) to the urgency created by an imminent terrorist attack. Pet. App. 6a, 12a-13a; *see also* Pet. 24-25 n.4. The Seventh Circuit's willingness to preserve for the City the opportunity

to invoke, in the future, a vague "suicide pact" exception to the Constitution (Pet. App. 6a) scarcely shows that additional factual development is needed on the important question that the Seventh Circuit actually decided.

3. Respondents devote the bulk of their Brief to the proposition that the decision below is correct. Br. In Opp. 6-12. That claim, of course, would not preclude plenary review even if it were true. This Court's duty to review issues on which the lower courts are divided does not operate only when the particular judgment under review might be reversed. But contrary to respondents' assertion, the linchpin of their legal analysis is clearly wrong. Respondents assert that the City is required to show some special need beyond the ordinary needs of law enforcement before police officers may stop vehicles without probable cause. *E.g. id.* at 6-7. But respondents never grapple with the fact that this Court rejected precisely the same argument in *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990). As the Court noted in *Sitz*, no showing of "special need" is required in "cases dealing with police stops of motorists on public highways." *Id.* at 450. Because the Seventh Circuit departed from that teaching, plenary review is clearly warranted.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

A. SCOTT CHINN
CORPORATION COUNSEL
CONSOLIDATED CITY OF INDIANAPOLIS
200 E. Washington Street
Indianapolis, IN 46204
(317) 327-4055

MIGUEL A. ESTRADA
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Petitioners

January 25, 2000